

Regulatory Impact Statement

Wildlife (Smuggling Deterrence) Amendment Bill

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Department of Conservation.

It provides an analysis of options to improve the deterrence and enforcement of serious offences against absolutely protected native wildlife, in particular of illegal take or export for commercial purposes.

The two key assumptions are that there is sufficient offending against protected wildlife with significant impacts to warrant action; and that increasing penalties will be effective in increasing deterrence for such offences.

There is strong evidence from four recent prosecutions, customs records, and international trade websites, that international smuggling of protected New Zealand reptiles has occurred in the past and is still occurring. The need for increased penalties and better deterrence initially arose from comments made by judges during prosecutions for such offending. It is likely that increasing maximum penalties will improve deterrence for offences involving commercial or export purposes as it will potentially trigger strong controls on potential offenders entering New Zealand, and prompt stronger international enforcement of controls on illegal trade. The proposed changes to enforcement powers address gaps and problems with existing powers that were identified by experienced DOC enforcement staff.

The proposals in the Bill focus solely on offences under the Wildlife Act 1953. They will not impose additional costs on businesses; impair private property rights, market competition, or the incentives on businesses to innovate and invest; or override fundamental common law principles.

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Status quo and problem definition

The current situation

1. Many of New Zealand's native animals are absolutely protected under the Wildlife Act 1953, including most native birds; all native reptiles, frogs, and bats; some specified invertebrates (e.g. giant wētā, kauri snails); and some specified marine species (currently corals and eight fish species). This means they cannot be collected from the wild, killed, possessed (live or dead), held in captivity, sold or exported, without proper authorisation. Marine mammals are also absolutely protected but through the Marine Mammals Protection Act 1978 rather than the Wildlife Act.
2. However, since 2010 seven foreign nationals have been convicted of capturing and attempting to smuggle absolutely protected native geckos out of New Zealand to supply an active international trade in these reptiles. In each case a number of geckos had been captured (up to 40). There is also evidence that other geckos have been smuggled out of New Zealand without being apprehended. Commercial poaching activities can be sophisticated, with different people acting as purchaser, researcher, hunter, and courier.
3. Illegal collection appears to have been a major factor in the decline and imminent extinction of at least one gecko population on the Otago Peninsula. People have also attempted to smuggle other protected species out of New Zealand in the past, including tuatara and native parrots.
4. There have also been 17 other, non-commercial prosecutions for hunting and killing absolutely protected wildlife in New Zealand since 2004, about half being for taking kereru.

Enforcement of the Wildlife Act

5. The Wildlife Act is administered by the Department of Conservation (DOC). The Act specifies the powers that enforcement officers have in relation to offences under the Act. For example, it contains some powers for enforcement officers of seizure, stopping, searching, and entry.
6. DOC currently has over 400 staff that are warranted as enforcement officers. They generally are experienced staff that have worked for DOC for some time. They are able to act throughout New Zealand and respond to offences under the various Acts that DOC administers.
7. Police are also deemed to be warranted enforcement officers under conservation legislation, and DOC maintains close relations with them. Assistance from the police is sought if there is any indication of likely violence or other difficulties, and, where practicable, for searches of premises.
8. However DOC generally needs to do its own enforcement work as operations frequently occur in remote locations, and specialist knowledge and skills are often needed for conservation enforcement work, both in terms of understanding the legislation and understanding the assets and values. DOC often needs to be able to act quickly, in order to apprehend an offender or in order to prevent major harm to conservation values.
9. New Zealand Fish and Game Councils manage game birds under the Wildlife Act and also have enforcement rangers. Currently there are 54 full-time, and these have the same powers under the Wildlife Act as DOC enforcement officers.

Decisions taken previously

10. Most of the changes considered for this Bill were included in a broader proposed Conservation (Authorisations, Compliance and Enforcement) Bill in 2003, which sought to rationalise and update compliance and law enforcement provisions across conservation legislation. This earlier proposed Bill was partially drafted but did not progress further.

Likely outcomes if no further action

11. In the absence of any action, the attempted international smuggling of geckos by foreign nationals is likely to continue. This poses a serious additional threat to wild gecko populations, many of which are small, fragmented, and already threatened by predation and habitat loss. Even low levels of illegal take can have significant effects as geckos breed slowly and poachers tend to target pregnant females. The poaching can also compromise research, and discourage community efforts at conserving the species.

12. Hunting and killing other absolutely protected wildlife species can also potentially have significant impacts depending on species, as many species are classified as endangered. Specimens may not be able to be returned to their wild populations if there is a risk of introducing disease.
13. The powers in the Wildlife Act have gaps when compared with standard enforcement powers in other conservation legislation (e.g. Conservation Act 1987, Reserves Act 1977, National Parks Act 1980, and Marine Reserves Act 1971). Not addressing powers in the Act will have the effect of:
 - a) Enforcement officers operating under inconsistent powers in different Acts;
 - b) The limited powers potentially hampering investigations; and
 - c) Officers carrying out enforcement duties possibly being exposed to risks of civil or criminal liability (for example if they had to use force to defend themselves).

Root cause of the problem

14. New Zealand geckos are sought after by international dealers and collectors as they are unique, attractive, long-lived, and bear live young. A pair can fetch up to NZ\$13,500 on trade websites depending on species, and demand on the international market exceeds the breeding capacity of the captive population. Commercial value drives a demand for the illegal take of species that are rarer and hence more vulnerable.
15. There is currently little control of illegal trade of New Zealand geckos within key market countries. This is because the geckos are only listed on Appendix III of the Convention on International Trade in Endangered Species (CITES), which seeks to ensure that international trade does not threaten the survival of species in the wild. In contrast, international enforcement of CITES is stronger for species on CITES Appendices I and II, on which other New Zealand species at possible risk of smuggling are listed (e.g. tuatara, orchids, parrots, black coral).
16. The causes of other offences against absolutely protected wildlife in New Zealand are more variable. Some cases have been ones of wilful cruelty (e.g. killing by stoning or kicking); some the negligent incorrect setting of possum traps in such a way as to catch weka. The taking of kereru is sometimes defended as being for cultural reasons.

Objectives

Desired outcomes

17. The objectives for this Bill are:
 - a) To improve deterrence against serious offences to absolutely protected wildlife, in particular against illegally taking specimens for commercial purposes or export;
 - b) To ensure the powers of enforcement officers under the Wildlife Act 1953 are sufficient to allow those committing offences to be effectively and efficiently apprehended and prosecuted.

The basis for deterrence

18. Deterrence could potentially be provided in the following ways:
 - a) By social expectations and peer pressure;
 - b) By the likelihood of being apprehended and prosecuted;
 - c) By the potential consequences of conviction, including:
 - i) the direct cost of possible fines;
 - ii) the limitation of personal freedoms through prison terms;
 - iii) by judges imposing penalties that exceed the potential commercial value to be gained from illegal take;
 - iv) by preventing persons convicted of smuggling from re-entering New Zealand for 10 years;
 - d) By encouraging better international enforcement against illegal trade in key market countries.
19. Preventing entry to New Zealand arises through the Immigration Act 2009. A person may be refused entry to New Zealand if it is considered they are of bad character or intend to commit a crime. In addition, a person sentenced to a term of 12 months or more is not eligible for a visa or entry permission to enter or be in New Zealand for 10 years. The proposed five-year maximum imprisonment penalties create the potential for this mechanism to apply. Other provisions in the

Immigration Act, relating to deportation of persons convicted of criminal offending, could potentially provide additional deterrence.

20. The level of penalties and the effort New Zealand puts into compliance sends a key message to CITES member countries who manage the import and export of species listed under CITES. This is particularly important in the key market countries.

Basis for this review

21. There is no statutory requirement to review penalties and powers in the Wildlife Act.
22. The Legislation Advisory Committee (LAC) guidelines note that:
“Increases to a maximum term of imprisonment for any particular offence should generally be contemplated only as a consequence of -
 - a) an international obligation which requires an alteration to domestic law;*
 - b) pressing and persistent levels of public concern about the inadequacy of penalty levels for that offence;*
 - c) the expression of judicial concern about the adequacy of particular penalties.”*
23. The proposal to increase penalties has been directly motivated by the expression of judicial concern (ground (c) above). During recent prosecutions, four District Court Judges encouraged Parliament to consider increasing the penalties for this offending. They noted that the commercial value of the geckos and the international trade provide incentives for the current offending, and that the existing penalties do not appear to be providing effective deterrence. A judge also recently raised concerns that by not allowing both a term of imprisonment and a fine to be imposed the Wildlife Act reduced options for sentencing.
24. Increasing the maximum penalties, although not formally required, is likely to support New Zealand’s proposal to increase the level of protection provided by CITES to New Zealand geckos. In March 2013, New Zealand will be seeking support from CITES member countries for moving the New Zealand gecko species most at risk from trade on to CITES Appendix II. This move would promote stronger controls against illegal trade of geckos in key market countries.
25. Media coverage has been supportive of the convictions for gecko smuggling; and the scientific and volunteer communities engaged in preserving these species have expressed a high level of concern about the poaching.
26. The Government’s 2011 conservation policy included introducing harsher penalties for smuggling protected species.
27. Passing the Bill by the end of 2012 would support enforcement against gecko poaching as most illegal take of geckos from the wild occurs during November–March.

Regulatory impact analysis

Non-regulatory options

28. Non-regulatory options are not considered further. DOC carries out many activities to promote awareness of New Zealand’s wildlife and protected natural areas including, among other things, through its website, publications, media work, school education programmes, signs, information centres, and during direct contact between DOC staff and the public. However effective enforcement remains essential. The offences in the Wildlife Act seek to protect the public interest in conservation, and not enforcing them brings the law into disrepute and encourages non-compliance.

Analysis of options: Penalties

29. Maximum penalties for serious offences against absolutely protected wildlife are currently six months imprisonment or a \$100,000 fine, with no ability for the courts to impose both.
30. Serious offences under the Wildlife Act include: hunting, killing, capturing, possessing, liberating, buying, selling, receiving, or disposing of absolutely protected wildlife. As noted above, District Court Judges have commented on the inadequacy of current penalties for these offences. If less offending occurs as a result of increased penalties, this would lead to the following benefits:
 - a) Fewer impacts on wildlife populations that might otherwise be affected;

- b) Benefits to groups and individuals who value that wildlife, to iwi for whom they may be a taonga species, and to community groups undertaking recovery work;
 - c) Reduced impacts on research. For example, in a 2011 case where geckos were illegally taken from sites in Otago and Banks Peninsula, Otago University noted that they had invested tens of thousands of dollars in staff time, student scholarship support and research costs to work on those species. They were reluctant to engage in further research because of the effects on their work when animals being studied were illegally removed;
 - d) Less enforcement action required from DOC, Police, and other agencies involved (e.g. the Ministry for Primary Industries where protected marine wildlife is involved);
 - e) Fewer prosecutions, with savings to DOC, the police, and the courts. For example, simple and uncontested prosecutions cost DOC an estimated average \$5,000 per case, including the costs of field surveillance, site investigation, interviews, court processes, and court appearances by solicitors and investigative staff. However more complex, defended hearings can cost significantly more, e.g. if they require more investigation, expert witnesses, or involve the Crown solicitor.
31. Maximum penalties that would allow the courts to impose prison sentences of over a year would potentially mean that a person convicted of smuggling could be prevented from visiting New Zealand for 10 years (paragraph 19). This could potentially reduce commercial poaching. For example, Customs records show that a person prosecuted in 2009 for attempting to smuggle 24 geckos and 20 skinks out of New Zealand, had visited New Zealand four times previously, including once with a known reptile trader from Switzerland. Another person convicted in May 2011, had visited New Zealand twice before in the previous 12 months.
32. The Wildlife Act also has per head (of wildlife) and per day penalties, and corporate penalties. There is no proposal to change these. To date the courts have preferred to sentence in totality rather than taking a “per head” approach and the proposed increases to maximum penalties should provide sufficient sentencing flexibility.

Option A: Status quo

33. The option of maintaining the status quo for penalties was not considered further. It does not address the concerns raised by Judges (para 23), and would not achieve the objective of this Bill of improving deterrence.

Option B: Increase maximum penalties to 5 years imprisonment or \$300,000, or both, for all serious offences to absolutely protected wildlife.

34. This option would mean that the court would consider the facts of the case, and evidence of commercial or export intent would be an aggravating feature when deciding the sentence.
35. For offences involving commercial purposes, this option would potentially achieve the deterrence in paras 18.c) and 18.d). This would achieve the savings and benefits noted in paragraph 30 above. The international trade market poses the key risk to absolutely protected wildlife.
36. For foreign nationals, imprisonment is likely to provide the greatest deterrence. But given the commercial context to this offending, the ability to also impose financial consequences (by increasing the options available to the Court in sentencing) may provide additional deterrence.

Sub-Option B(1): All offences strict liability

37. All serious offences against absolutely protected wildlife are currently strict liability offences—that is, it must only be proven that the offender committed the relevant act. Under this sub-Option, the offences in Option B would remain strict liability.
38. It is more straightforward to prosecute cases involving strict liability offences.
39. However maximum imprisonment penalties of five years for strict liability offences would be inconsistent with the Legislation Advisory Committee (LAC) Guidelines. There are domestic and international precedents for custodial sentences for strict liability offences, but not at the level of five years (for example, ill-treatment under the Animal Welfare Act 1999 is strict liability with a maximum imprisonment penalty of 12 months).

Sub-Option B(2): All offences mens rea

40. Under this sub-Option, the offences would change from being strict liability to being mens rea, where the mental element of intent must also be proven. This option is consistent with the LAC Guidelines and with other domestic legislation, but would be a major change to the Act.
41. Proving a mental element for all offences would be significantly harder to achieve than for the current situation, which may result in fewer successful prosecutions. This in turn could result in offenders thinking there is less likelihood of being apprehended and successfully prosecuted. This could encourage non-compliance and reduce the deterrence effect of higher penalties.
42. This Option would also have less flexibility in prosecuting options than Option C. Although both commercial and non-commercial charges could be laid under both Options, Option C's non-commercial offences are strict liability whereas all offences under Option B(2) must have a mens rea element proven.
43. The effect that a mens rea requirement would have for Option B (or for commercial and export offences under Option C) would depend in part on whether it required the prosecution to prove that the person knew the wildlife in question was absolutely protected. Such a requirement would make it extremely difficult to enforce the Wildlife Act.

Option C: Two-tier approach for serious offences against absolutely protected wildlife

44. This Option proposes maximum penalties for serious offences against absolutely protected wildlife of:
 - a) 5 years, or a fine of \$300,000, or both, for activities involving commercial purposes or export; These offences would be mens rea; and
 - b) 1 year, or a fine of \$100,000, or both, for other serious offences, which would remain strict liability.
45. Serious offences to absolutely protected marine fish and marine invertebrates, (other than offences involving commercial purposes or export), would remain at their existing levels of six months, or a fine of \$250,000, but with a new option of imposing both. These penalties are consistent with those under the Marine Mammals Protection Act 1978. The offences would also remain strict liability.

Offences involving commercial purposes or export

46. Option C would require two new offences in the Wildlife Act 1953 of activities involved in hunting, killing or possessing absolutely protected wildlife for commercial purposes or for export. These two offences focus on and differentiate the activities that pose the most serious risks to New Zealand's absolutely protected wildlife and therefore to the public interest.
47. The highest penalties would apply to these activities involving commercial purposes or export. This sends a clear message to potential offenders and to the international community that this wildlife is highly valued by New Zealanders and the nation is committed to protecting them. It would potentially achieve the deterrence in paras 18.c) and 18.d) and the savings and benefits noted in paragraph 30 above.
48. District Court judges have made clear that the custodial element of the potential penalty provides the greatest deterrence to foreign nationals caught poaching. However the ability to also impose financial consequences increases the options available to the Court in sentencing. One judge has noted that "*It would also be worthwhile, given the commercial nature of most of these enterprises, to allow the imposition of significant financial penalties as well as significant terms of imprisonment just to discourage (offenders)...*" (Judge R.E. Neave, 29 March 2010)
49. The level of penalty proposed for commercially-related and export-related offences in order to provide sufficient deterrence means they would require proof of intent.
50. Creating these new offences, and their proposed penalties, are consistent with the LAC Guidelines.

Other serious but non-commercial offences

51. For other serious but non-commercial offences, this Option increases the maximum imprisonment penalty from 6 months to one year, but does not increase the existing maximum fines. However, for these cases there is no evidence that a \$300,000 fine would be a greater deterrence than a \$100,000

fine as most offenders would not have the ability to meet fines of these levels anyway and the Sentencing Act 2002 directs Courts to impose fines consistent with the offender's means.

52. These other offences would remain strict liability. The increase in penalty from 6 months to 1 year is less inconsistent with the LAC Guidelines than Option B(1). However a maximum penalty of 12 month imprisonment is still relatively high for strict liability offences. Because strict liability offences do not require the Crown to prove intent, a maximum penalty of 12 months is normally considered appropriate only for the most serious strict liability offences.
53. However the offences involved—hunting, killing etc native species that are absolutely protected and are in many cases endangered—are the most serious offences under the Wildlife Act. For some threatened species, killing even low numbers could have a significant impact on the species.
54. For both commercial/export offences and other serious offences, the proposed penalties provide the scope for flexibility in sentencing sought by the Courts. The potential gravity of an offence will vary depending on various matters, such as the species, whether it is endangered or a taonga species, and the potential impacts of the offending on the species. This information is provided to the Courts who may take such matters into account when sentencing. In one example from 2011, when sentencing two persons for taking jewelled geckos from Otago Peninsula and Banks Peninsula the judge described the offending as:
“...offending which is becoming too prevalent in New Zealand...It is offending against every New Zealander in that you were taking from New Zealand a treasured indigenous species. It is offending which clearly has targeted and had an impact upon the people and the inhabitants of the Otago Peninsula. It is offending which, if successful, would have had a significant detrimental impact upon the native population of jewelled geckos on the Otago Peninsula. It is also offending against the mana whenua of Otago Peninsula...through the destruction of their cultural heritage.”
55. There are also precedents in other legislation for offences of similar severity. For example, the Animal Welfare Act 1999 has 12 month maximum penalties for failure to meet an animal's needs or alleviate pain, ill-treatment, and breaches of restrictions on use of traps, all of which are strict liability offences.
56. The potential defence provided in the Wildlife Act for strict liability offences is for the defendant to prove they did not intend to commit the offence and took all reasonable steps not to.

Prison costs for Options B and C

57. The Department of Corrections calculates that a higher maximum penalty of five years imprisonment would cause at most an additional 3–5 prison beds per year, which would cost an additional \$132–220,000 per year.
58. This cost would probably apply equally to Options B and C. The calculation is based on the rate of international smuggling cases since 2010, and it assumes no deterrence effect. Costs would be lower if deterrence did occur, which is expected. Domestic prosecutions for serious but non-commercial offences against absolutely protected wildlife are unlikely to lead to new prison costs, as to date the Courts have primarily imposed low fines or community work for such offences.

Imposing both a term of imprisonment and a fine

59. The Act currently provides no ability for the courts to impose both a term of imprisonment and a fine. Options B and C include the ability to impose both, for serious offences against absolutely protected wildlife, to support the flexibility for sentencing that has been sought by the Courts.
60. It is proposed to also extend that flexibility to offences of liberating wildlife and obstructing enforcement officers which also have the option of either a custodial sentence or a fine available. It would not extend to offences against game birds or partially protected wildlife, or to other offences under the Act such as damage to property, as the penalties for these offences are limited to fines.
61. There are no apparent negative effects to extending this flexibility in sentencing. It is unlikely to lead to additional prison costs.

Analysis of options: Powers

62. The improvements in powers discussed below are intended to improve enforcement of offences and strengthen deterrence.

63. The issues that were considered in relation to powers were: what new powers to consider, who would apply the powers, what offences the powers would apply to, and what would be appropriate administrative and legislative safeguards.

Status quo: No change to existing powers

64. This approach was not considered as it would not address the problems outlined in paragraph 13, or achieve the objectives of this Bill (paragraph 17).

A limited power of arrest

65. It is proposed to provide a limited power of arrest for specially trained and warranted enforcement officers. It would mirror the limited power of arrest currently contained in the Trade in Endangered Species Act 1989, which is not as wide as that held by police officers. It would target high level offending that poses the greatest risks to absolutely protected wildlife, and would allow an enforcement officer to temporarily arrest a suspected offender until they can deliver the suspect into police custody.
66. The power would enable the officer to gather evidence effectively as it restricts the ability for the suspect to abscond. This would be particularly important where suspected offenders were short term visitors to New Zealand and of no fixed abode, and therefore were a potential flight risk. The power therefore potentially reduces the need for DOC enforcement officers to call on the police to assist. This would be more efficient in planned surveillance and intelligence gathering operations which can last for several weeks and often occur in remote locations hours from town centres. However while it may reduce the draw on police resources it would not remove the need for continued cooperation between the departments.
67. Appropriate training would be required before a person would be warranted for this power. However this would impose limited costs on DOC, as the power would be limited to only about 15–20 DOC staff with sufficient suitable experience and expertise. Some of these would be specialist enforcement officers with extensive experience and/or a police background who are already skilled in this area; many are already trained and warranted to use a power of arrest available under the Trade in Endangered Species Act.
68. This is a significant power and DOC could be perceived as being heavy handed. However it would be rarely used, and would be most likely used for international poaching offences which can pose significant risks to absolutely protected wildlife.
69. The limited power of arrest would not extend to New Zealand Fish and Game Council rangers. This is because it will only be available for the most serious offences against absolutely protected wildlife. In addition, powers of arrest should only apply to offences that carry the penalty of a term of imprisonment and penalties for offences against game species are limited to fines.

Provide standard powers currently missing from the Wildlife Act

70. It is proposed to provide the following powers:
- a) To interfere to prevent or stop offending;
 - b) To stop a person;
 - c) To use force that is reasonable and necessary;
 - d) To require suspected offenders to give their date of birth and evidence of their identification to rangers; and
 - e) To seize a wider range of materials used in the commission of a crime or that may be evidence of a crime.
71. These five powers are standard enforcement powers that are variously found in the Conservation Act 1987, National Parks Act 1980, Reserves Act 1977, and Marine Reserves Act 1971. In each case the proposed powers address gaps in existing powers in the Wildlife Act. They would therefore be provided to all warranted enforcement officers under the Wildlife Act, including both DOC enforcement officers and New Zealand Fish and Game Council permanent staff, but not to honorary rangers. They would also be available in relation to all offences under the Act, including offences against game or partially protected species.
72. The purpose of these powers would be to address the issues raised in paragraph 13, including to:

- a) Remove barriers to effective enforcement action;
 - b) Remove any risk of civil or criminal liability to officers conducting lawful investigative actions;
 - c) Increase consistency between powers in conservation legislation, which will make it easier for enforcement officers to use similar best practice in different enforcement situations.
73. Benefits include more effective and efficient enforcement, and therefore better wildlife protection:
- a) *To interfere to prevent*: allows an officer to prevent an offence occurring (e.g. by removing a trap set to catch geckos) which benefits the wildlife that would otherwise be affected;
 - b) *To stop*: may be necessary in order to question the person or exercise other enforcement powers, for example in situations where the person is trying to evade the officer or to hide evidence of offending;
 - c) *To use reasonable and necessary force*: may be necessary to ensure the officer's safety when no other option is available (although officers are trained to control compliance situations verbally, rather than to rely on physical intervention);
 - d) *To give their date of birth and evidence of their identification*: is necessary to support investigations and file prosecutions in courts;
 - e) *To seize a wider range of material*: will improve the ability to obtain the evidence necessary to build a case and assist the court. This will be particularly useful for proving intent for commercial offences.
74. These proposed changes to powers are likely to reduce the draw on police resources but will not remove the need for continued cooperation between the departments
75. Few costs would be incurred in training officers as these powers are already found in other conservation-related legislation and enforcement officers are already trained in their use.

Consultation

76. The following agencies were consulted in the preparation of the Cabinet paper:
- a) The Ministry of Justice, in relation to legal implications, and consistency with the New Zealand Bill of Rights Act 1990, and Human Rights Act 1993;
 - b) Treasury, particularly in relation to the regulatory impacts statement and financial implications;
 - c) Te Puni Kokiri, in relation to implications for Maori;
 - d) The Department of Corrections, in relation to the implications of increasing maximum penalties for terms of imprisonment;
 - e) The Ministry of Business, Innovation and Employment, for the implications in relation to the Immigration Act 2009 of increasing penalties for persons convicted of wildlife smuggling;
 - f) The New Zealand Police, in relation to the use of powers to enforce the Wildlife Act;
 - g) The Ministry for Primary Industries, in relation to absolutely protected marine wildlife;
77. The Wildlife Enforcement Group, which is comprised of representatives from the Ministry of Primary Industries, New Zealand Customs Service, and the Department of Conservation, was also consulted and supported the proposals.
78. The New Zealand Fish and Game Council were consulted on the proposed changes to Wildlife Act enforcement powers that would affect them, and supported their introduction.
79. A brief summary of the reasons for the Bill, and the changes proposed, were also provided to the New Zealand Conservation Authority (NZCA) and Te Runanga o Ngai Tahu.
- a) The Ngai Tahu Claims Settlement Act 1998 (s 293) requires the Minister of Conservation to advise Ngai Tahu in advance of the preparation of any relevant statutory or non-statutory plans, policies, or documents relating to a taonga species listed in Schedule 97 of the Act. The proposed Poaching Bill is relevant to this requirement as many of the taonga species are bird species that are absolutely protected under the Wildlife Act;
 - b) The NZCA's advice was sought as it has a statutory role under the Conservation Act with policy, management, and advocacy functions; and is an independent advisor to the Minister and Director-General of Conservation.

80. The NZCA supported the Bill, and Te Runanga o Ngai Tahu considered it to be a sensible approach to help the protection of these species.

Key feedback received

81. Agencies generally supported the proposals. The key feedback received focussed on the proposed power of arrest, and the proposal to increase maximum penalties from 6 months to 12 months for strict liability non-commercial offences.
82. The Ministry of Justice asked whether the proposed 12 month maximum penalty was appropriate for non-commercial offences if they were strict liability. As discussed under Option C, it is considered that this penalty is appropriate given the potential seriousness of these offences, the comments made by judges seeking greater flexibility in sentencing, and the precedents that exist for offences of similar seriousness in other domestic legislation.
83. The Ministry of Justice and the New Zealand Police noted that the proposed limited power of arrest was a significant power.
- a) The Ministry noted that the effect of the power on the right to be free from arbitrary detention (affirmed in s 22 of the New Zealand Bill of Rights Act) would depend on the exact wording in the Bill. DOC will work with the Ministry during the development of the draft legislation to ensure adequate safeguards are in place;
 - b) The New Zealand Police noted that implementing the power effectively would require staff to be properly vetted, trained and supported. DOC will work with the Police as it develops the systems needed to properly implement the powers.

Conclusions and recommendations

84. The following approaches are proposed for the Bill:
- a) Option C, of maximum penalties for offences against absolutely protected wildlife of:
 - i) 5 years, or a fine of \$300,000, or both, for activities involving commercial purposes or export. These offences would be mens rea; and
 - ii) 1 year, or a fine of \$100,000, or both, for other serious offences, which would remain strict liability.
 - b) Retain existing penalties for serious offences against absolutely protected marine species (other than offences involving commercial purposes or export), but with the option of imposing both a custodial sentence and a fine. These offences would also remain strict liability.
 - c) To facilitate Option C, establish new offences of hunting, killing or possessing absolutely protected wildlife for commercial purposes or export.
 - d) Provide the Courts with the option of imposing both a term of imprisonment and a fine for all those offences under the Wildlife Act that have the option of imprisonment or a fine available.
 - e) Provide a limited power of arrest under the Wildlife Act in relation to specified serious offences against absolutely protected wildlife.
 - f) Provide powers in relation to all Wildlife Act offences:
 - i) To interfere to prevent or stop offending;
 - ii) To stop a person;
 - iii) To use force that is reasonable and necessary;
 - iv) To require suspected offenders to give their date of birth and evidence of their identification to rangers; and
 - v) To seize a wider range of materials used in the commission of a crime or that may be evidence of a crime.
 - g) Provide the powers in (f) to DOC enforcement officers and to New Zealand Fish and Game Council permanent staff that are warranted officers under the Wildlife Act.
85. On balance the benefits of the proposed penalties and powers are likely to outweigh the costs and provide greater deterrence as described in paragraph 18. The proposed penalties target the highest penalties to offences posing the greatest risks to absolutely protected wildlife. The proposed powers

complement the higher penalties by enabling more effective and efficient investigation and enforcement of offences.

Implementation

86. The DOC compliance network will ensure that enforcement officers are aware of the changes to the penalties and powers in the Wildlife Act and their implications. This network is responsible for DOC's compliance and enforcement strategy, training of warranted officers, education of the public, and legal and operational aspects of investigations and prosecutions. It includes DOC's enforcement experts, solicitors, and warranted enforcement officers.
87. DOC currently has six officers trained and warranted in a power of arrest that is available under the Trade in Endangered Species Act 1989 (TIES Act), and a further 20 DOC staff were recently trained. This training enables them to conduct Wildlife Enforcement Group (WEG) activities in conjunction with Customs, the New Zealand Police, and the Ministry of Primary Industries. This power and training would support Wildlife Act enforcement but does not replace the need for such a power in the Wildlife Act as many absolutely protected wildlife species are not covered by the TIES Act.
88. Officers will be trained where necessary in the other proposed new powers. This is likely to be limited, as most DOC enforcement officers would be trained in these powers under other conservation-legislation. Higher penalties would be sought during prosecution of cases, depending on what is appropriate given the facts of each case.
89. DOC would use its best endeavours (for example through its website) to inform the public about the changes in order to achieve better deterrence.

Mitigating implementation risks

90. The two key risks in implementing the proposed new powers are:
 - a) That the powers are not used appropriately, or are used in such a way as to not comply with the New Zealand Bill of Rights Act 1990 or the Privacy Act 1993;
 - b) That the safety of enforcement officers is compromised.
91. DOC adopted a National Compliance Strategy in 2009. This requires that before an officer is warranted they must attend a training course which includes law enforcement ethics and relevant legislation. The course emphasises the necessity to comply with the New Zealand Bill of Rights Act 1990 and the Privacy Act 1993. It also includes the requirements for dealing with young people, interviewing skills, documentation, evidence and conducting prosecutions, as well as an extensive "tactical communications" module to ensure officer safety. Follow-up training is also available including conservation law compliance response team training on specialist topics. Those carrying out the training have strong backgrounds and considerable experience in law and law enforcement.
92. Fish and Game Council rangers also undergo a screening process to ensure they are suitable to be warranted. They are also required to undergo a mandatory two-day "officer safety" or "tactical communications" module similar to DOC enforcement officer training.
93. The power of arrest would have statutory and other safeguards to ensure it was used properly and reasonably. These would include that:
 - a) It would be limited to specified and specially trained and warranted enforcement officers. These are likely to be DOC's specialist and full-time compliance officers, or appropriate enforcement staff in partner agencies involved in wildlife enforcement such as the New Zealand Customs Service and the Ministry for Primary Industries;
 - b) The power would only be used in the event that police officers were not available or it was not practicable to obtain police assistance;
 - c) The officer must believe on reasonable grounds that the person is about to commit, is committing, or has committed an offence against absolutely protected wildlife;
 - d) The person would be delivered into the custody of the police as soon as reasonably practicable;
 - e) DOC would facilitate a detained person's rights, such as the right to consult and instruct a lawyer without delay.

94. As well as sufficiently robust training, implementing the power of arrest would require appropriate policies and procedures. DOC would work closely with partner agencies (New Zealand Police, Customs, Primary Industries) to develop the necessary training and supporting policy systems.

Impacts on Maori

95. Section 4 of the Conservation Act 1987 requires DOC to give effect to the principles of the Treaty of Waitangi when interpreting and administering the Act. This Conservation Act requirement also applies to other conservation legislation, including the Wildlife Act, to the extent that it is not inconsistent with those Acts.
96. Improving the protection of native species will provide benefits to iwi who value those species. If the species taken is a taonga species, this is likely to be considered an aggravating factor by the Courts when sentencing.
97. Treaty of Waitangi settlement Acts are also relevant. For example, the Ngai Tahu Claims Settlement Act 1998, section 296, whereby members of the Ngai Tahu whanui may possess parts of dead wildlife without a permit.
98. The penalties and powers in the Bill only apply where an activity is an offence, and the Department has established protocols for providing for customary use. The training required for DOC enforcement officers requires them to treat and record any claim of customary use rights carefully and the matter is then investigated.

Minimising compliance costs

99. Enforcement training imposes costs. However the proposed powers in paragraph 84.f) are found in other conservation legislation. Enforcement officers are therefore already familiar and trained in them. The difference is that the Bill would mean these powers could now be used in the context of Wildlife Act offences.

Implications for existing regulation

100. The proposed changes to powers makes the Wildlife Act more consistent with powers in other conservation-related legislation. This promotes better enforcement, and better understanding amongst the public as to what can be expected if they offend.

Monitoring, evaluation and review

101. The effects of the proposed penalties and powers in the Wildlife Act will be evaluated through:
- a) The number and nature of prosecutions under the Wildlife Act that appear on the convictions register that DOC maintains;
 - b) Comments made by judges during sentencing;
 - c) The level of penalties imposed during sentencing, as recorded on the convictions register;
 - d) The appearance of protected species on international trade websites;
 - e) Any problems with enforcement being reported by managers through the DOC compliance team;
 - f) Monthly operational reviews of individual warranted officers.

The Department and the Wildlife Enforcement Group both carry out activities to monitor CITES and such things as international trade websites.